

REMARKS

Claims 1-13, 15-18, 20-27, and 33-36 are presently pending. Claim 14 has been canceled. Claims 19 and 28-32 were previously canceled. Claims 12 and 24 have been amended. Claims 35 and 36 have been added.

Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the remarks appearing below.

Rejection under 35 U.S.C. § 102

The Examiner has rejected claims 1, 33, and 34 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,689,418 to Young, stating that Young discloses a device having all of the limitations of these claims. Applicants respectfully disagree.

Young discloses a method of decorating a porous flower pot (appears to be an ordinary clay pot) by covering the exterior of the sidewall with plaster of paris and embedding decorative cinders into the plaster of paris.

Claims 1, 33 and 34 each require the limitation of a rodent deterrent secured to at least a portion of the exterior of the container. In this connection, the Examiner asserts that the Young's decorative cinders are equivalent to the rodent deterrent of the claims. Applicants respectfully disagree. First, the base pot of the Young flower pot is, with virtual certainty, a clay pot and the decorated Young flower pot is intended for above-ground display. The base clay pot does not need a rodent deterrent. This type of clay is a material that rodents are not likely to gnaw through. In effect, the clay pot itself is a rodent deterrent. To call the cinders a rodent deterrent is nonsensical. In addition, the sidewall of the clay pot is relatively very smooth, thereby inhibiting a rodent from climbing up the sidewall to reach the interior of the pot. Since the decorative cinders do not provide any rodent deterrence function (indeed Young says that the cinders are merely decorative), Applicants respectfully assert that it is not reasonable to consider the cinders a rodent deterrent as contemplated by the present application. Second, if the Young cinders are anything relative to rodents, they are rodent climbing aids that, due to their rough edges and spaces therebetween, would tend to help rodents climb the outside of the pot so that they can reach the plants in the pot. Providing an aid to rodents is completely counter to

providing a rodent deterrent. For at least these reasons, Applicants respectfully assert that Young does not disclose a rodent deterrent, and, therefore, the Young patent cannot anticipate claims 1, 33, and 34.

In addition, claim 33 requires that the rodent deterrent be distributed over substantially all of the exterior of the device. This is not so with the Young flower pot, since the entire bottom of the pot is not covered with the plaster of paris/decorative cinder decoration. For this additional reason, the Young patent cannot anticipate claim 33.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Rejections under 35 U.S.C. § 103

Fernando et al. and Young

The Examiner has rejected claims 1, 5-8, 11, and 14 under 35 U.S.C. § 103 as being obvious in view of Germany patent document DE 019907577 C1 to Fernando et al. and the Young patent, discussed above, stating that Fernando et al. disclose all of the limitations of these claims except for the rodent deterrent. The Examiner then states that Young discloses a rodent deterrent and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Fernando device with the rodent deterrent taught by Young. Applicants respectfully disagree.

The Young patent is described above in connection with the anticipation rejection.

Fernando et al. disclose a biodegradable pot for growing or germinating plants. The pot is made of coir fibers secured together with latex. The Fernando et al. pot includes a lower section that contains a mesh of fibers that define apertures that ensure that the fiber material does not degrade prematurely while the plant roots grow and to drain a buildup of water inside the pot.

As discussed above relative to the anticipation rejection, Young simply does not disclose a rodent deterrent. Since neither Young nor Fernando et al. disclose a rodent deterrent and each of rejected claims 1, 5-8, 11 and 14 require a rodent deterrent, the combination cannot render these claims obvious.

In addition, the only way to assert that the Young cinder decoration is a rodent deterrent in the context of the Fernando et al. and Young references would require hindsight of the present

claims. A skilled artisan looking at the two references without knowledge of the present claims would simply not find Young's decoration to be a rodent deterrent. Indeed, both references are completely silent on rodent deterrent. Clearly, then, the only motivation for making such an assertion comes from the rejected claims. While some level of hindsight reconstruction is necessary in any obviousness-type analysis, the level of hindsight in the present rejection is not proper.

Furthermore, the asserted combination would destroy some of the teachings of Fernando et al. Fernando et al. disclose that the lower portion of the pot has apertures to inhibit degradation of the fibers and to inhibit a buildup of water inside the pot. If one were to apply Young's plaster of paris/decorative cinder decoration to the Fernando et al. pot, it would no longer have these characteristics. It is improper to combine references in making an obviousness-type rejection when the combination destroys the teachings of one or more of the references. This is indeed the result in the present rejection.

For at least these reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Young and Kawaguchi et al.

The Examiner has rejected claims 2 and 3 under 35 U.S.C. § 103 as being obvious in view of the Young patent, discussed above, and further in view of U.S. Patent No. 5,675,933 to Kawaguchi et al., stating that Young discloses all of the limitations of these claims except for the a protective grid. The Examiner then states that Kawaguchi et al. disclose these missing limitation and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Young pot with Kawaguchi et al. protective grid. Applicants respectfully disagree.

Each of the rejected claims requires, among other things, the presence of a rodent deterrent. However, both the Young patent and Kawaguchi et al. patent are completely silent on a rodent deterrent (see the discussions above relative to the anticipation rejection and the obviousness rejection in view of the Young and Fernando et al. references for reasons why Young is completely silent on a rodent deterrent). Consequently, the present combination cannot render claims 2 and 3 obvious.

For at least these reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al., Young and Okii et al.

The Examiner has rejected claims 9 and 10 under 35 U.S.C. § 103 as being obvious in view of the Young and Fernando et al. references, discussed above, and further in view of U.S. Patent No. 4,945,059 to Okii et al., stating that Young and Fernando et al. disclose all of the limitations of these claims except for a growth enhancer. The Examiner then states that Okii et al. disclose a growth enhancer and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Young/Fernando et al. device with the growth enhancer disclosed by Okii et al. Applicants respectfully disagree.

The Young and Fernando et al. patents are as described above.

Okii et al. disclose a method of proliferating fungi.

Each of claims 9 and 10 requires a rodent deterrent. However, none of the cited references disclosed or suggest a rodent deterrent. (See the discussions above relative to the anticipation rejection and the obviousness rejection in view of the Young and Fernando et al. references for reasons why Young is completely silent on a rodent deterrent.)

For at least the foregoing reason, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al.

The Examiner has rejected claims 12, 15-17, and 24 under 35 U.S.C. § 103 as being obvious in view of the Fernando et al. reference, described above, stating that Fernando et al. disclose all of the limitations of these claims except for planting the container in soil. The Examiner then asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention plant the Fernando et al. device in soil. Applicants respectfully disagree.

Each of amended claims 12 and 24 include the limitation that the exterior of the container includes a rodent deterrent so as to deter a rodent from gnawing through the biodegradable fiber or material. As discussed above in detail, Fernando et al. are completely silent on a rodent deterrent. Therefore, the present rejection cannot stand.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al. and Kawaguchi et al.

The Examiner has rejected claims 13, 25, and 26 under 35 U.S.C. § 103 as being obvious in view of the Fernando et al. and Kawaguchi et al. references, discussed above, stating that Fernando et al. disclose all of the limitations of these claims except the grid cover. The Examiner then states that Kawaguchi et al. disclose a grid cover and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Fernando et al. pot with the grid cover of Kawaguchi et al. Applicants respectfully disagree.

Claims 13, 25, and 26 depend from claim 12 or 24, which, as discussed in the previous section, have been amended to include a limitation that the exterior of the container includes a rodent deterrent so as to deter a rodent from gnawing through the biodegradable fiber or material. Neither the Fernando et al. nor Kawaguchi et al. reference disclose or suggest this limitation. Therefore, the combination cannot render claims 13, 25, and 26 obvious.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al. and Okii et al.

The Examiner has rejected claims 18, 20-22 and 27 under 35 U.S.C. § 103 as being obvious in view of the Fernando et al. reference and the Okii et al. patent (each described above), stating that Fernando et al. disclose all of the limitations of these claims except for a growth enhancer. The Examiner then states that Okii et al. disclose the missing limitation and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Fernando et al. pot with the growth enhancers disclosed by Kawaguchi et al. Applicants respectfully disagree.

Regarding claims 18, 20, 22 and 27, each of these claims require that the growth enhancer be attached to the container (in the case of claim 27 the enhancer is released from the container). Each of the Fernando et al. and Okii et al. references are completely silent on the growth enhancer being attached to the container or the enhancer being released from the container. Therefore, the combination cannot render these claims obvious.

In addition, claim 18 depends from claim 12, which has been amended to include the limitation that the exterior of the container includes a rodent deterrent so as to deter a rodent from gnawing through the biodegradable fiber or material. Neither the Fernando et al. nor Okii et al. reference disclose or suggest this limitation. Therefore, claim 18 cannot be obvious in view of the applied combination for this additional reason.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al., Okii et al. and Iwasaki et al.

The Examiner has rejected claim 21 under 35 U.S.C. § 103 as being obvious in view of the Fernando et al. and Okii et al. references, described above, and further in view of U.S. Patent No. 4,844,734 to Iwasaki et al., stating that Fernando et al. and Okii et al. disclose all of the limitations of this claim except for the growth enhancer being ground-up seashells. The Examiner then states that Iwasaki et al. disclose the missing limitation and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Fernando et al./Okii et al. device with the ground-up seashell disclosed by Iwasaki et al. Applicants respectfully disagree.

Claim 21 requires that the ground-up seashells be attached to the container. None of the applied references discloses or suggests a growth enhancer, let alone ground-up seashells, is attached to a container. Therefore, the combination is missing this limitation and cannot render claim 21 obvious.

For at least this reason, Applicants respectfully request that the Examiner withdraw the present rejection.

Fernando et al., Okii et al. and Kawaguchi et al.

The Examiner has rejected claim 21 under 35 U.S.C. § 103 as being obvious in view of the Fernando et al., Okii et al. and Kawaguchi et al. references, described above, stating that Fernando et al. and Okii et al. disclose all of the limitations of this claim except for the grid cover. The Examiner then states that Kawaguchi et al. disclose the missing limitation and asserts that it would have been obvious to a person having ordinary skill in the art at the time of the

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invention to provide the Fernando et al./Okii et al. device with the grid cover disclosed by Kawaguchi et al. Applicants respectfully disagree.

Claim 23 depends from claim 20, which, as discussed above, is not rendered obvious because neither the Fernando et al. nor Okii et al. reference discloses or suggests attaching a growth enhancer to a container. Likewise, Kawaguchi et al. are completely silent on this limitation. Therefore, the combination is missing this limitation and cannot render claim 23 obvious.

For at least this reason, Applicants respectfully request that the Examiner withdraw the present rejection.

New Claims 35-36

New claim 35 requires that the rodent deterrent be distributed over the exterior surface of the bottom wall of the container. Even if the Examiner persists in considering the decorative gravel of Young to be a rodent deterrent (which it is not), Young clearly does not disclose or suggest putting the gravel on the bottom of the pot. Indeed, this would be nonsensical since this would make the pot uneven on the bottom.

New claim 36 requires that the walls of the container be made of a material that a rodent can gnaw through and that the rodent deterrent be provided to deter a rodent from gnawing through that material. Clearly this is not the case with the Young pot since the base pot is made of a hard clay that a rodent would not gnaw through.

Conclusion

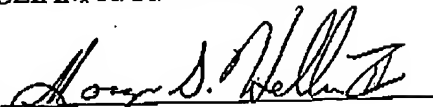
In view of the foregoing, Applicants respectfully submit that claims 1-13, 15-18, 20-27, and 33-36, as amended, are in condition for allowance. Therefore, prompt issuance of a Notice of Allowance is respectfully solicited. If any issues remain, the Examiner is encouraged to call the undersigned attorney at the number listed below.

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Respectfully submitted,

WILLIAM R. RAAP ET AL.

By: 

Morgan S. Heller II

Registration No.: 44,756

Downs Rachlin Martin PLLC

Tel: (802) 863-2375

Attorneys for Applicants

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